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Supreme Court, U.S.
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No. 95-349

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

EDWARD SIGUEL,
Petitioner pro se,

v.

ALLSTATE LIFE INSURANCE CO.,
Respondent.

REPLY TO ALLSTATE BRIEF IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

OPPOSITION TO A PETITION FOR WRIT OF CERTIORARI

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November 17, 1995

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

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6 pp

Reply to Brief in Opposition

Petitioner has alleged "special and important" reasons to grant review. Rule 10(1)(a) and 10(1)(c). The lower courts have departed from the accepted and usual course of judicial proceedings concerning reasons to find excusable neglect, disregarded the Federal Rules of Civil Procedure (**FRCP**) and decisions by the Supreme Court in granting a post-deadline extension of time, the lower courts decided important questions of federal law which should be settled by this Court, and decided them in a way that conflict with applicable decisions of this Court and the US Constitution. The lower courts sanctioned such departures in a manner that requires policing by the Supreme Court.

Allstate ignores precedent from this Court when it stated that Siguel cited no conflict with other Court of Appeals decision. Allstate did not cite, let alone discuss, dispute or distinguish the Supreme Court cases or constitutional law cited by petitioner Siguel.

The lower court's decisions violate constitutional rights and conflict with this Court's decisions pertaining to reasons to allow a party to take actions after a deadline, and the distinction between *pre* and *post*-deadline actions carefully drawn in *Pioneer Investment Services Co. v. Brunswick Assoc. Limited Partnership*, 113 S.Ct. 1489 (1993) and *Lujan v. National Wildlife Federation*, 497 U.S. 871, 895 (1989). The lower court's decisions render meaningless the statutory right to access the court, abridge the freedom of speech and the right of the people to petition the Government for a redress of grievances because it prohibits (without cause) a plaintiff from being assisted by counsel. According to the lower courts, in order for a party to be assisted by counsel, that party must give up his right to proceed *pro se* and give up his right to present his case as he wishes to present it. By imposing tort-like proof requirements in a breach of contract case where the parties had agreed to a proof of loss, the lower court departed from established contract law, cases decided in other circuits (that tort law does not apply to contracts), and the Supreme Court precedent in *American*

Airlines v. Wolens, No. 93-1286, 1995, 63 U.S. Law Week 4069, 4070.

Unless the judgement below is reversed, rich defendants will have a license to violate the rules with inpunity. ***Contrary to Supreme Court rulings, under the law approved by the lower courts***, an insurer may violate FRCP in order to delay and later deny payment of a claim. Because the lower courts did not considered that delays, costs and lost resources are the "prejudice" mentioned in FRCP 36, insurers can refuse to comply with FRCP without fear of sanctions. The impact of these decisions would devastate civil justice, already impaired by a perception that justice is biased towards rich defendants.

At p. 5 of its opposition brief, Allstate falsely alleges that "the parties entered into an agreement enlarging the time within which Allstate might respond . . to discovery". Unless Allstate can produce a copy of this alleged agreement, Allstate should be sanctioned by this Court. Siguel's petition at 25 quotes Allstate's reasons to refuse to respond on time which include no such agreement. Allstate continues its misrepresentations at p.21. These attempts to improperly influence the Court should be given less weight than the number of cases cited by Allstate.

There was no finding by the district court that such agreement exists or that Siguel ever agreed to an extension of time to respond to admission requests. ***No such agreement exist, which had to be approved by the Court as required by FRCP 29(2).*** Allstate continues its previously successful practice of influencing a court with incorrect statements. The dispute on whether or not the parties agreed to an extension of time is irrelevant. Allstate had counsel and knew that an agreement to extend the time was of no effect without court's approval. The lower court improperly considered Allstate's allegations instead of enforcing FRCP 29(2) which states that agreements to extend the time "may be made only with the approval of the court".

There is no dispute that Allstate failed to comply with FRCP 36 and served, without prior court approval,

very late responses to requests for admissions. The legal dispute is what the consequences of that failure are under the FRCP and whether the lower courts applied the correct criteria to determine when an intentional violation of the rules can be excused. These important federal questions were decided by the lower courts in a way that conflicts with applicable decisions of this Court. This Court should exercise its power of supervision to settle these issues.

May a Court compel a plaintiff to give up his right to *pro se* representation, give up the right to present the case as he sees fit and thus violate the First Amendment, as a condition to allow him meaningful access to the Court, namely the right to be assisted by counsel (essential to properly present a case)? (see Prof Tribe at n. 10 of Siguel's petition).

The District Court, as a matter of policy, without due process or individualized rationale, refused to allow plaintiff *pro se* Siguel to be assisted by counsel (for any use, not just trial counsel) ***on the sole grounds that he was appearing pro se***. Allstate states that Siguel "***merely had to give up his pro se status***" in order to be able to have counsel assist him (Allstate at 17). Giving up the right to be *pro se* denies meaningful access to the court. Petitioner Siguel wanted to proceed *pro se* to try the case his way. That is his Constitutional right to free speech, and a statutory right. He should not have to sacrifice that right just to be assisted by counsel (Siguel's brief at n.8).

When the assistance of counsel for any purpose (not "hybrid representation", co-counsel or trial counsel) is denied, effective and meaningful access to the court is also denied. Such actions by a District Court Judge violate plaintiff's constitutional right to due process and statutory right to access to the Courts; violate the First Amendment, and constitute an abuse of the Judge's discretion since no discretion was exercised. Consumer statutes that provide for reimbursement of attorney fees, aimed to protect consumers and increase access to the courts, are meaningless when a *pro se* party is not allowed to hire an attorney to assist him.

Allstate admits that the insured died of cardiorespiratory arrest. The law of what constitutes an accidental death has been differently interpreted by many Courts since Justice Cardozo stated:

> "Probably it is true to say that in the strictest sense and dealing with the region of physical nature there is no such thing as an accident." "The attempted distinction between accidental results and accidental means will plunge this branch of the law into a Serbonian Bog." *Landress v. Phoenix Mutual Life Insurance Co.*, 291 U.S. 491, 54 S.Ct. 461, 78 L.Ed. 934 (1934).

The only meaningful definition consistent with state law and modern science which avoids Cardozo's "Serbonian Bog" is that an accidental death is a death unexpected by the insurer. Insurers can write contracts to exclude "undesirable" accidental deaths. However, insurance contracts should be enforced against the insurer, in accordance with established law. Petitioner asserts that the District Court departed from established concepts of insurance contract law in a manner that favors the defendant insurer and make it practically impossible for many claimants to prove their claims in federal courts, a forum because accidental death insurance is sold by mail across state lines.

The New York Times on 4/27/94 reported about scandals in insurance companies, invalidating policies, delays to avoid paying claims, etc. Similar matters have been written in the Journal of the ABA. Insurers can delay payment until either the claimant is no longer available, witnesses or facts cannot be obtained (the attending physician died while Allstate investigated this claim for 18 months). Unless this Court overturns the lower courts, insurers will now have powerful legal weapons to delay payment of claims. Insurers will delay payment until claimants abandon their claims, further encouraged by the lower courts' decision to allow a burden of proof at trial higher than the one required by the insurance policy.

Money makes a big difference in the judicial system.

Money allows a party to hire terrific witnesses and lawyers. Money pays for research to find evidence to support one' s claims. The insurer can afford professional experts in accidental death claims. The insurer can afford physicians to provide expert testimony and to review the medical records. In our adversary system of justice, experts present opinions that favor the paying party.

An insurer can assure a claimant that it provided all the needed information, as Allstate did in this case, and reject the claim 18 months later when performance of an autopsy would be meaningless, evidence is no longer available, and proof of each event leading to the death can no longer be obtained because the attending physician is dead. An insurer can obstruct pretrial with motions and objections to drain resources from a poor plaintiff. One obstacle remains to the ability of a rich party to "purchase" convenient "justice": the FRCP. If this Court allows Allstate to remain unpunished for making a mockery of the rules, others will practice law the same way.

Insurers will rely on *Siguel vs. Allstate* because it affects thousands of claims. It provides a completely new and drastically different set of rules to decide insurance claims. It interprets FRCP in a manner different from Supreme Court cases. It changes the burden of proof for health and accidental death insurance claims. It encourages violation of rules in civil litigation.

Plaintiff-petitioner respectfully submits that the Court must enforce the rules of procedure in a fair and meaningful manner or justice will collapse. The Court may use this opportunity to correct an injustice, prevent future injustices, and discourage abuse of the rules.

November 17, 1995 Respectfully submitted,

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